FILE COPY

Office - Supreme Court, U
FILED
AUG 29 1941
CHARLES ELMORE CRO
OLE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, AUSTIN R. SIMCOX, NANCY M. SIMCOX, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, LOUIS P. ZERWECK, GEORGE REMNSNIDER, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTIONS TO DISMISS OR AFFIRM.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois,
GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois,
Counsel for Appellees.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Form of action	2
The statute in controversy	3
Statement of facts	4
There is no substantial constitutional question involved in this controversy	15
Discussion of cases cited by appellants in their jurisdictional statement	31
Motion to dismiss as to appellees Dwight H. Green and George F. Barrett	47
Motion to dismiss or affirm	49

Table of Cases Cited.

Beal v. *Missouri Pac. R. Co.*, 312 U. S. 45, 61 Sup. Ct. 418	17, 29
Beeler v. *Smith*, — Fed. Supp. — (June 4, 1941)	43
Bird v. *Commonwealth*, 124 Va. 833, 98 S. W. 632	27
Block v. *City of Chicago*, 239 Ill. 251	18, 20
Cantwell v. *Connecticut*, 310 U. S. 296	23, 36, 40, 41
Chicago Great Western R. Co. v. *Kendall*, 266 U. S. 94	29
City of Louisiana v. *Bottoms*, 300 S. W. 316	24
Coleman v. *City of Griffin*, 189 S. E. 427	24
Dealk v. *Commonwealth*, 166 Ky. 39, 178 S. W. 129	25
Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479	34
Dire v. *State*, 99 Ga. 20, 25 S. E. 609	27
Erie Railroad Co. v. *Hiet*, 274 U. S. 99	18, 22
Fenner v. *Boykin*, 271 U. S. 240	17, 27
Fiske v. *Kansas*, 274 U. S. 380	41
Fox Film Corp. v. *Collins*, 236 Ill. App. 281	18
Georgia, etc., Power Co. v. *Railroad Commission*, 262 U. S. 625	29
Hague v. *C. I. O.*, 101 F. (2d) 774	31

Page

Herndon v. *Lowry*, 301 U. S. 242 35
Johnson v. *Wells Fargo*, 239 U. S. 234 34
Kennedy v. *City of Moscow* (Idaho), 39 Fed. Supp. 26 42
Knights of Pythias v. *Meyer*, 265 U. S. 30 ..... 18, 21
Lanzetta v. *State*, 306 U. S. 451 35
Lovell v. *City of Griffin*, 303 U. S. 444 41
McMasters v. *State*, 207 Pac. 566 24
Nashville, C. & St. L. Ry. Co. v. *McConnell*, 82 F. (2d) 65 34
Near v. *Minnesota*, 283 U. S. 697 37
Oney v. *Oklahoma City*, — F. (2d) (June 9, 1941) 42
People v. *Downer*, 6 N. Y. S. (2d) 566 43
People v. *Edmonston*, 4 N. Y. S. (2d) 257 43
People v. *Spielman*, 318 Ill. 482 ..... 18, 20
Pierce v. *Society of Sisters*, 268 U. S. 510 ..... 32, 35
Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. —, —, 61 Sup. Ct. 643 ..... 17, 28
Risty v. *Chicago, R. I. & P. Ry. Co.*, 270 U. S. 378 33
Schneider v. *State*, 308 U. S. 147 ..... 39, 41
Smyth v. *Ames*, 169 U. S. 466 33
South Holland v. *Stein*, 373 Ill. 472 42
Spielman Motor Sales Co. v. *Dodge*, 295 U. S. 89 .... 17, 27
Stratton v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530 33
Stromberg v. *California*, 283 U. S. 359 35
Swift & Co. v. *United States*, 276 U. S. 311 32
Terrace v. *Tyompson*, 263 U. S. 197 33
Thornhill v. *Alabama*, 310 U. S. 88 40
United States v. *Cohne Grocery Co.*, 255 U. S. 81 35
Watch Tower Bible & Tract Society v. *Bristol*, 24 Fed. Supp. 57 ..... 17, 18, 28
Watson v. *Buck*, 61 Sup. Ct. 962 ..... 17, 27, 28
Western Turf Ass'n v. *Greenberg*, 204 U. S. 359 18
Whitney v. *California*, 274 U. S. 357 18
Young, Ex parte, 209 U. S. 123 32

STATUTES CITED.

Constitution of the State of Illinois (1870), Article II, Section 3 22
Judicial Code, Section 266 (28 U. S. C. 380) 3, 7, 9

Page

Illinois Revised Statutes (1939), Chapter 38, par. 471 ..... 3, 8, 13, 18
Smith-Hurd Annotated Illinois Statutes, Chapter 38, par. 402 20

TEXT BOOKS CITED.

34 A. L. R. 580 26
48 A. L. R. 97 27
8 Am. Jur. 835, par. 4 26
9 C. J. 392, par. 17 27
11 C. J. S. 825, par. 16 27

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

STATEMENT OF GROUNDS MAKING AGAINST THE JURISDICTION OF THIS COURT, INCLUDING THEREIN, MOTIONS TO DISMISS AS TO CERTAIN APPELLEES, AND MOTIONS TO DISMISS OR AFFIRM AS TO ALL APPELLEES.

Pursuant to Rule 12, Paragraph 3, of the Supreme Court, now comes Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf; and further come Harry J. Flanders, Assistant State's Attorney for Saline County, Illinois, at-

torney for Tom Gram, individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, individually, and as deputy sheriff of Saline County, Illinois, Trafton Dennis, individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, individually, and as Justice of the Peace of Saline County, Illinois; and further comes Georg F. Kelling, Assistant State's Attorney for St. Clair County, Illinois, attorney for "Doc" Prindable, individually, and as sheriff of St. Clair County, Illinois, Louis P. Zerweck, individually and as State's Attorney of St. Clair County, Illinois, George Remnsnider, individually, and as Mayor of the city of Belleville, Illinois, Thomas Lonie, individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, individually, and as Justice of the Peace of St. Clair County, Illinois, all appellees in the above entitled cause, and file this, their Statement of Grounds Making Against the Jurisdiction of this Court, therein, motions to dismiss as to certain appellees, and motions to dismiss or affirm as to all appellees.

For convenience of this Court, and to save useless repetition, all of the appellees herein have joined in this, their said Statement, and have set forth matters and grounds making against the jurisdiction of the Supreme Court which they, and each of them, believe sufficient to enable this Court to determine that it has no jurisdiction, or that this said appeal should be dismissed, or in the alternative that final decree of the court below be affirmed, as per motions of the said appellees submitted herewith.

A.

Form of Action.

The appellants (plaintiffs in the court below), who are members of a religious cult known as "Jehovah's Witnesses" sought, by the way of injunction, pursuant to the statute of the United States, Section 266 thereof as amended

(28 U. S. C. A. 380), to restrain the appellees, who were State and county officials of the State of Illinois (defendants in the court below), from enforcing a certain Illinois penal statute (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939); the said appellants contending that the said statute was unconstitutional, void and indefinite in its terms.

Pursuant to the provisions of the above statute (28 U. S. C. A. 380) a three judge court was assembled in the District Court of the United States, in the Eastern District thereof. All of the appellees herein filed motions to dismiss. Affidavits and briefs of all parties were filed and a hearing had on the motion for an interlocutory injunction.

On June 17, 1941, the District Court entered its order denying the motion for an interlocutory injunction, made special findings of fact, and filed its memoranda, suggesting that as the matters to be considered by the court had been fully presented by the pleadings, admissions and affidavits of the parties, that if the parties so stipulated, the application for an interlocutory injunction might be considered as a final hearing on the merits.

Pursuant to the suggestions of the court, a stipulation was filed that the findings of the court with reference to the interlocutory injunction be considered as a final hearing and this appeal, filed August 1, 1941, followed.

B.

The Statute in Controversy.

The statute in question (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939), claimed by the appellants to be unconstitutional, null and void, indefinite and uncertain, is as follows:

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama

or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00)."

C.

Statement of Facts.

We believe in the statement of facts made by the appellants herein that many conclusions of facts have been therein stated not warranted by the pleadings, admissions and evidence in the case. These appellees, therefore, believe it necessary to make a restatement of these facts. We believe that the facts, as found by the Court below, present a fair and impartial resume of the pleadings, admissions and evidence adduced at the trial of this cause and as found by the Court in its finding of facts and in its opinion. The appellees, therefore, in restating the facts herein have adopted, in substance, the facts as found by the Court.

The appellants, (plaintiffs in the court below) members of an unincorporated body known as "Jehovah's Witnesses", belong to a religious cult or sect, each of the said members claiming to be an ordained minister of Jehovah God, and holding credentials from the Watchtower Bible and Tract Society, a New York corporation publishers for "Jehovah's Witnesses". Each of the appellants, as ordained ministers, engage in preaching the gospel of God's Kingdom from house to house and publicly in the street and distribute literature printed by the Watchtower Bible and Tract Society, Incorporated, a New York corporation, and

the Watchtower Bible and Tract Society, a Pennsylvania corporation, said literature being in the form of books, booklets, and periodicals of various titles and issues. These publications are delivered to people in the streets or homes canvassed, either making outright gifts of the publications or receiving contributions from the recipients for such publications. In disseminating their religious views and beliefs they use portable phonographs and play records to persons who will listen. The literature published by the Watchtower Bible and Tract Society was distributed in St. Clair and Saline Counties by "Jehovah's Witnesses", acting as full or part time ordained ministers of the gospel. From time to time the "Jehovah's Witnesses" came from surrounding counties in Illinois and Missouri and assembled and worked with those in St. Clair County and in the City of Belleville, situated in the County of St. Clair, in large groups. As many as 500 are affected by the situation in St. Clair County, of which complaint is made. It was their frequent practice to assemble and work together in large numbers in various communities. They expect trouble and interference and have agents whose duties are to check interference and provided means of legal counsel when necessary. (Finding of Fact No. 18, Court below.)

The appellants interpret certain passages of the Bible in which they claim, according to such interpretation, that there will be a complete destruction of all religious, commercial and political institutions, and a wholesale slaughter of unchristian people, all of which will be committed by an invisible army of the Lord at the great "Battle of Armageddon". The literature published by the Watchtower Bible and Tract Society, and distributed by the "Jehovah's Witnesses", admittedly is an attack upon religion as practiced today and at all times since man has been on earth. Certain of the literature attempts to set forth the true distinction between all religion and the true worship or service of

Almighty God. The literature attempts to expose the present day religion, both Protestant and Catholic, as a snare and a racket of the very worst kind, and the appellants claim that the religion, as practiced today, is in no way related to, or a part of, the true worship of Almighty God. The literature distributed by the appellants denounce and attack all organized religion, Catholic and Protestant alike. The Catholic Church, in particular, is charged with being wilfully and deliberately engaged in a racket imposed upon its members by wilful deception, and is charged with disloyalty to the United States, and with being in league or combination with the Fascists and Nazis, and engaged in a conspiracy to gain political control of the world and all nations of the world. The literature further charges that the Catholic Church has disloyal designs and keeps arms and ammunition in their churches and buildings.

Illustrative of the shocking nature of the charges made in this literature are excerpts from the same found in Paragraph 19 in the Statement of Facts of the Court below.

There are three groups of appellees in this case.

The first group is comprised of George F. Barrett, as Attorney General of the State of Illinois, and Dwight H. Green, as Governor of the State of Illinois, who, according to the said complaint, are both sued in their official capacities, (Paragraphs 13 and 14, Appellants' complaint.) The appellees, Dwight H. Green and George F. Barrett, according to the allegations contained in appellants' complaint, did not personally participate in any of the alleged wrongs committed against the appellants. The appellants, (plaintiffs in the Court below) charge that the said appellees, Dwight H. Green and George F. Barrett, are joined as defendants only in their official capacity as Governor and Attorney General, respectively, of the State of Illinois, solely because the validity of a State statute was involved,

and because it is claimed by the said appellants that the said Dwight H. Green and George F. Barrett are indispensable parties defendant.

Section 266, Judicial Code, amended, 28 U. S. C. A. 380, provides for the application for an interlocutory injunction, and it is therein provided:

> "Said application shall not be heard or determined before at least five days notice of the hearing *has been given to the Governor and the Attorney General of the State* and to such other persons as may be defendants in the suit."

The Court below, in its opinion with reference to the appellees Dwight H. Green and George F. Barrett, said:

> "The defendants, Dwight H. Green and George F. Barrett, Governor and Attorney General, respectively, of the State of Illinois, urge that, since the complaint avers that neither of them actually participated in the alleged wrongs of which complaint is made and that neither of them have made threats of future action against the plaintiffs, they are not proper parties defendant. Whether or not they are indispensable parties, as contended by plaintiffs, or even necessary parties, we are of the opinion that in view of the fact that plaintiffs attack the constitutionality of a statute of the State of Illinois and seek to enjoin its enforcement said defendants, in their official capacities, are proper parties. (28 U. S. C. A. 380; *Arneson* v. *Denny*, 25 F. 2d 993.) Since these defendants are not charged with having actually done or threatened to do anything of which plaintiffs complain the term 'defendants' when used hereafter will refer to the other defendants only."

The second group of appellees embraces the defendants of St. Clair County, which include "Doc" Prindable, the Sheriff; Louis P. Zerweck, the State's Attorney; George Remnsnider, the Mayor of the City of Belleville; Thomas

Lonie, Chief of Police of the City of Belleville, and Anthony J. Stoeckel, a Justice of the Peace of St. Clair County.

The third group of appellees embraces all Saline County, Illinois, officials, including Tom Gram, Sheriff of Saline County; Jack O. Edwards, Deputy Sheriff of Saline County, and Commander of the American Legion Post at Harrisburg, Illinois; Luke Barnhill, Justice of the Peace of Saline County; and Trafton Dennis, who became State's Attorney of Saline County on December 2, 1940, succeeding Lloyd H. Melton.

The appellants herein sought to restrain the appellees, (defendants in the court below) from arresting, prosecuting, or threatening to arrest and prosecute any of the "Jehovah's Witnesses" under and by virtue of a certain statute of the State of Illinois, known as Chapter 38, Section 471, Illinois Revised Statutes, 1939, which said statute was as follows: (Repeated here for the convenience of the Court.)

> "It shall be unlawful for any person, firm or corporation to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama, or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color or creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00)."

The appellants contend that the above described statute is unconstitutional and void on its face, and is vague and indefinite because it unlawfully denies and deprives the appellants and others of "Jehovah's Witnesses" of civil

rights, freedom of speech, of peace, and of assembly and freedom to worship the Almighty God according to the dictates of their consciences or contrary to the Federal Constitution, Fourteenth Amendment, Section 1.

All of the appellees in the Court below filed motions to dismiss, supported by briefs and affidavits, and a three judge court having been assembled pursuant to Section 266, Judicial Code, amended, (28 U. S. C. A. 380) after a hearing, considered the appellants' prayer for a preliminary injunction, seeking to restrain the appellees from enforcing the statute above described, or from arresting, interfering with or prosecuting appellants, or other of "Jehovah's Witnesses" on account of their activities in distributing books, booklets, periodicals and other works.

The court below, on June 17, 1941, after a consideration of the pleadings, admissions contained therein, affidavits, arguments and briefs of counsel for the respective parties, denied appellants' motion for a preliminary injunction, and the court below further said in its memorandum:

> "The situation is fully disclosed by the pleadings, the affidavits, and the admissions. It would seem that the parties might stipulate that the hearing on the application for temporary injunction be viewed as an application for a permanent injunction."

Pursuant to this suggestion of the court, the parties herein stipulated that the determination on the hearing for a preliminary injunction should be considered as a final hearing for a permanent injunction, and accordingly an appeal was taken to this court.

The court below, in its findings of fact (Paragraph 21) found that the members of "Jehovah's Witnesses" were distributing literature published by the Watchtower Bible and Tract Society in St. Clair County, Illinois, in June

1940; that the Sheriff of St. Clair County and the Mayor and Chief of Police and members of the police force of the city of Belleville, began to receive telephone calls from numerous persons who objected to the literature being distributed by the appellants and complained that the literature attacked all religion, holding the religion up to contempt, derision and obloquy, and such persons stated that, "unless the distribution of such literature was stopped there would be trouble, and that such persons would be taken off the streets in ambulances". The court further found that in a neighboring city of Litchfield the "Jehovah's Witnesses" had distributed similar literature, as the result of which, a serious riot was incited and a mob, estimated at one thousand persons, assembled, violent assaults and sluggings occurred, many persons were injured, and much property damage resulted. That in order to quell the riot it was necessary to call out the Illinois State Police Riot Squad. That the said county and city officials knew from these reports that the distribution of the literature by the "Jehovah's Witnesses" had caused mobs and rioting in other localities and "honestly believed that immediate danger of riot, breach of peace, and personal injury to said 'Jehovah's Witnesses' and others" might occur as a result of their distribution of literature in Belleville in St. Clair County. The members of the police force of Belleville investigated the activities of the "Jehovah's Witnesses" in the said city, and a number of the said "Jehovah's Witnesses" were arrested and detained by the said officials "with the honest belief that their activities in distributing the literature was in violation of Section 471, Chapter 38 of the Revised Statutes of the State of Illinois". That the said officials, also "with the honest belief that riots and disturbances of the peace were imminent, and that the safety of persons and property in the community was seriously endangered due to said activities of "Jehovah's Wit-

nesses". Complaints were filed in St. Clair county, which were, in substance and form, as follows:

> "The complaint and information of R. V. Gustiv, Assistant State's Attorney in said County, made before Anthony J. Stoeckel, Esquire, one of the Justices of the Peace in and for said County, who being duly sworn, upon his oath says that Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers on, towit: the 31st day of August 1940, at the County aforesaid then and there unlawfully advertise, sell or offer for sale a certain sketch which publication portrays depravity, criminality, unchastity or lack of virtue of a class of citizens belonging to the Roman Catholic religion, which said publication exposes the citizens of said religion to contempt, derision or obloquy and which is productive of breach of the peace or riot contrary to the form of the statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.
>
> That this complainant has just and reasonable grounds to believe, and does believe that the said Emma Wilson, Charles R. Leiwe, Charles A. Davis, Ernest Summers committed said offense, and therefore prays that, (same named offenders) may be arrested and dealt with according to law."

The court below further found in its Finding of Facts (Paragraph 22) that all of those arrested were given the privilege of making bonds, that none of those arrested were "maltreated, assaulted or otherwise dealt harshly with in any physical way". The Court further found that none of the cases in Belleville and St. Clair County have been tried, but all (approximately twenty-three in number) are still pending. The court further says:

> "There appears to have been no effort on the part of anyone to secure a determination of the cases. No reason appears which should prevent an early trial of the cases and determination on appeal, if desired."

In Saline County, at the city of Harrisburg in that county, the occurrences complained of by the appellants consisted of arrests under facts similar in substance to those in Belleville, and in St. Clair County, except that the cases at Harrisburg were brought to trial. The court below further found that all of the Saline County defendants played an official part in the arrest, arraignment and trial of three "Jehovah's Witnesses", namely, Cecil Bevins, Austin R. Simcox and Nancy M. Simcox. That the acts and conducts of the said "Jehovah's Witnesses", which led to their arrests and prosecutions in Harrisburg, were similar to the acts and conducts which led to the arrests and complaints in Belleville. In the Saline County cases, which were brought to trial in Harrisburg, the complaints, in substance, were as follows:

> "Did unlawfully present and exhibit a certain sketch and publication, which said publication portrayed lack of virtue in the Catholic and Protestant religions, and did then and there expose the believers in those religions to contempt and derision and which was productive of a breach of the peace and riots."

The appellees were found guilty and all of them appealed to the Circuit Court of Saline County, where their said causes are now pending on appeal.

The court further found that "nothing appears which has prevented or should hereafter prevent an early final determination of the cases in the State courts, if that is desired."

The court below found that the acts of the Saline County officials were official acts of such appellees, performed in good faith and "in an honest effort to carry out their official duties and to preserve the peace". That the said Saline County officials, in good faith, prosecuted the appellants for their acts and conduct which they verily believed

constituted violations of Chapter 38, Section 471, Illinois Revised Statutes.

The court further found (Paragraph 26) "that none of the defendants now threaten or intend to make future arrests of "Jehovah's Witnesses" in St. Clair and Saline Counties unless and until advised by State's Attorney of said county that the laws are being violated by such 'Jehovah's Witnesses'."

There is no showing in the record that there were any arrests, trials, or convictions other than those above referred to.

The court, in its Findings of Fact, further found, (Paragraph 27) that the appellees had reasonable basis for their fear; that if the appellants and other of the "Jehovah's Witnesses" who were distributing literature in St. Clair and Saline Counties were not restrained that *riots, assaults* and *breaches of the peace* would ensue "because of resentment against the bitter attacks made in said literature upon all religion and upon the Protestant and Catholic churches and the charges of corruption, deception and disloyalty made against the heads and leaders of said churches" (Paragraph 27, Finding of Facts).

The court below further found, as a fact, that the appellants and other members of their groups would not suffer "irreparable injuries or damages of any considerable consequence" if an interlocutory injunction was not granted pending final hearing. The court below further found that the officials and law enforcing officers of St. Clair and Saline Counties were enforcing in their communities the provisions of Section 471, Chapter 38 of the Illinois Statute in a manner dictated by their honest judgments "as lawful" and "as honestly believed by them to be lawful and necessary to preserve peace and prevent riots and other disturbances of the peace, as well as threatened injury to

public and to individuals and to public and private property."

The court below, in its memorandum, said:

> "Furthermore, it does not appear from the evidence that it is essential for the plaintiffs (appellants herein) to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their ministry."

The court below further said, in its memorandum:

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say that it is not clearly apparent that the statute in question is unconstitutional. Plaintiffs say it is vague and indefinite. There is truth in the charge but the statute deals with a type of offense that defies exact definitiveness. In that respect it is similar to statutes creating the offense of criminal libel. (Chapter 38, Section 402, Illinois Revised Statutes 1939.) Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question for the Courts of Illinois."

The court below, in its memorandum, further said:

> "The record shows that there are a score or more of cases against plaintiffs pending in the courts of Illinois, each presenting an opportunity for a speedy determination of the validity, meaning and proper application of the statute in question, in so far as plaintiffs' rights are affected. Should the decision of the Illinois Courts be unsatisfactory a review of the Federal questions by the Supreme Court of the United States will be available. In our view of the case, under the evidence now before the court, the circumstances are not of that exceptional character that justifies an interference by the Federal courts when the way is open for plaintiffs to secure a prompt adjudication of their rights in the courts of Illinois.

> Plaintiffs assert that they have not violated the Illinois statute in question when properly construed. The Illinois Supreme Court alone can declare with final authority the meaning and applicability of the statute."

The court, in its memorandum, then considered the question of whether or not the appellants, by the enforcement of the statute, would sustain irreparable loss, and said:

> "We think the question must be answered in the negative and the application for interlocutory injunction denied."

D.

There is No Substantial Constitutional Question Involved in This Controversy.

The court below so held, in substance, when it found:

1.

That it was unnecessary under the evidence for that court to consider the constitutionality of the State statute, but that had the court found it necessary to pass upon the constitutionality of the statute it would have found that it was not clearly unconstitutional.

2.

That whether the statute in question was unconstitutional "would seem to be first a question for the Courts of Illinois."

3.

That the general equity rule was applicable, *i. e.*, a court of equity will not interfere to prevent the enforcement of a criminal statute only under extraordinary circumstances where the danger of irreparable loss is both great and immediate.

4.

That the danger of irreparable loss to the appellants was neither great nor immediate.

5.

That such loss to the appellants as may be threatened can be obviated in a large measure, if the appellants desire, by seeking a constitutional construction of the statute in the Illinois courts.

6.

That Federal courts are reluctant to construe or pass upon the validity of a State statute, or a principle of law involving State policies or local property rules when the construction or application of such statute or principle may remove all constitutional objections, and particularly, in the instant case, where such determination can readily be obtained in the State courts.

7.

That the contention of the appellants that they have not violated the State statute, if properly construed, is unsound, the court finding that the final authority to determine the meaning and applicability of the State statute was for the Illinois courts.

We feel that the following propositions of law, and the authorities cited in support thereof, fully sustain the action of the trial court, and refute the grounds upon which the appellants ask that this Court take jurisdiction of this cause.

I

Equity will not interfere to prevent the enforcement of a State criminal statute, even though unconstitutional, unless it be under exceptional circumstances where the danger of

irreparable loss is both great and immediate, and only then upon a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights.

Spielman Motor Co. v. *Dodge,* 295 U. S. 89-95.
Railroad Commission of Texas v. *Pullman Co.,* 312 U. S. —, 61 S. Ct. 643, 644-645.
Beal v. *Missouri Pac. R. R.,* 312 U. S. 45, 61 Sup. Ct. 418, 421.
Fenner v. *Boykin,* 271 U. S. 240.
Watch Tower Bible & Tract Soc. v. *City of Bristol,* 24 F. S. 57, Aff'd without opinion 305 U. S. 572.
Watson v. *Buck,* — U. S. —, 61 Sup. Ct. 962-966.

The Court in its memoranda found that the danger of irreparable loss was neither great nor immediate, saying:

> "Here the danger of irreparable loss is neither great nor immediate and such loss as may be threatened can be obviated in large measure by the plaintiffs themselves, if they so desire, pending the hearing of the case on its merits or the authoritative construction of the statute by the courts of the State."

The court further said that there were no exceptional circumstances in the case warranting the intervention of a court of equity, saying:

> "The record shows that there are a score or more of cases against plaintiffs pending in the courts of Illinois each presenting an opportunity for a speedy determination of the validity, meaning and proper application of the statute in question in so far as plaintiffs' rights are affected. Should the decision of the Illinois courts be unsatisfactory a review of the Federal questions by the Supreme Court of the United States will be available. In our view of the case, under the evidence now before the court, the circumstances are not of that exceptional character that justifies an interference by the Federal courts when the

way is open for plaintiffs to secure a prompt adjudication of their rights in the courts of Illinois."

In view of the rule of law laid down in the cited cases and the facts as found by the court below, we do not believe that this Court is warranted in assuming jurisdiction herein.

II

The statute in question is a valid exercise of police power of the State and has been so construed by the Courts of Illinois.

Fox Film Corp. v. *Collins,* 236 Ill. App. 281-294.
Block v. *City of Chicago,* 239 Ill. 251.
People v. *Spielman,* 318 Ill. 482.
Knights of Pythias v. *Meyer,* 265 U. S. 30-32.
Erie Railroad Co. v. *Hiet,* 274 U. S. 99, 100-101.
Watch Tower Bible & Tract Soc. v. *City of Bristol,* 24 F. Supp. 57, Aff'd without opinion, 305 U. S. 572.
Whitney v. *California,* 274 U. S. 357.
Western Turf Ass'n v. *Greenberg,* 204 U. S. 359.

The validity of the statute in question was considered in *Fox Film Corp.* v. *Collins,* 236 Ill. App. 281, where that court had before it the consideration of the validity of an ordinance of the City of Chicago, which was in the words of the statute (Chapter 38, Paragraph 471, Illinois Revised Statutes 1939), except the words "immoral" and "obscene" were added to the ordinance.

The court said, (page 286) concerning this ordinance:

> "In 1922, the City of Chicago, following quite closely the text of the amended statute, passed an ordinance (Section 2787, Chicago Municipal Code 1922) which provided that if a picture for the showing or exhibition of which an application for a permit is made 'is immoral or obscene, or portrays depravity, criminality or lack of virtue, of a class of citizens of any race, color,

creed or religion and exposes them to contempt, derision or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it shall be the duty of the superintendent of police to refuse such permit, otherwise it shall be his duty to grant such permit.' The words 'immoral or obscene' are not in the statute."

The court then said (Pages 289-290), concerning its validity:

"The question then arises, do the new matters contained in section 2787 render the ordinance invalid. They were put in, apparently, to have the ordinance comply in substance with the Criminal Code. In addition to the words 'immoral or obscene' they are as follows: (1) Pictures which portray depravity, criminality or lack of virtue of a class of citizens of any race, color, creed or religion and expose them to contempt, derision, or obloquy; (2) those which tend to produce a breach of the peace or riots; and (3) those purporting to represent any hanging, lynching or burning of a human being. Of course it may be a question whether or not the word 'immoral' as used in the earlier and in the present ordinance and sanctioned by the *Block* case, is not in and of itself of sufficient connotation to include all the other matters now recited in section 2787, but, however, that may be, we are of the opinion that the added matters do not make the section invalid. In determining whether a picture portrays depravity of a class and exposes them to obloquy, or portrays matters tending to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it does not require any more knowledge or the exercise of any more difficult judgment than in determining whether a picture is immoral or obscene; yet the determination of the latter, pursuant to an ordinance, has already been approved, as we have stated above, in the *Block* case. In our judgment, none of the added matters makes the section invalid."

The *Block* case therein referred to by the court is *Block* v. *City of Chicago,* 239 Ill. 251, wherein a similar ordinance was held valid.

The court below, in its memoranda filed with appellants' jurisdictional statement, said with reference to the validity of the statute in question:

> "In the view we take of the case under the evidence we do not find it now necessary to consider the constitutionality of the statute. In passing, however, we do say that it is not clearly apparent that the statute in question is unconstitutional. Plaintiffs say it is vague and indefinite. There is truth in the charge but the statute deals with a type of offense that defies exact definitiveness. In that respect it is similar to statutes creating the offense of criminal libel. (Chapter 38, Section 402, Illinois Revised Statutes 1939.)"

It should be noted that the court therein referred to the Illinois statute pertaining to criminal libel.

The statute referred to is as follows (Chapter 38, Paragraph 402, Smith-Hurd Annotated Illinois Statutes):

> "A libel is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or financial injury. (1874, March 27, R. S. 1874, p. 348, Div. 1, Par. 177.)"

The Supreme Court of Illinois had before it for consideration the "libel" statute above referred to in the case of *The People* v. *Spielman,* 318 Ill. 482. In this case the newspaper printed a scurrilous and defamatory article concerning the American Legion. The Supreme Court said (Page 489):

> "Criminal liability for libels rests upon their tendency to provide breaches of the peace. (*State* v. *Avery,*

7 Conn. 266; *Kennerly* v. *Hennessy*, 68 Fla. 138; *Newell* on Slander and Libel, 4th ed. secs. 804, 807, 827; 4 Sharswood's Blackstone's Com. P. 151; 3 Wharton's Crim. Law,—11th ed., secs. 1915, 1916; 1 Bishop's Crim. Law —9th ed.—sec. 540.) The libel need not be on a particular person. It may be upon a family, class, corporation or other body. (*State* v. *Brady*, 44 Kan. 435; *Crane* v. *State*, 14 Okla. Crim. 30; *State* v. *Hosmer*, 142 Pac. (Ore.) 581; *Jones* v. *State*, 38 Tex. Crim. 364; *Palmer* v. *City of Concord*, 48 N. H. 211; *Rex* v. *Osborne*, 2 Barn. K. B. 138.) A libel upon a class or group has as great a tendency to provoke a breach of the peace or to disturb society as has a libel on an individual, and such a libel is punishable even though its application to individual members of the class or group cannot be proved. *Rex* v. *Osborne, supra; People* v. *Gordon*, 219 Pac. (Cal.) 486; *State* v. *Brady, supra.*"

In *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32, this Court said:

"Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the State legislation, as though such meaning had been specifically expressed therein. See, for example, *Leffingwell* v. *Warren*, 2 Black 599, 603; *Green* v. *Lessee of Neal*, 6 Pet. 291, 297-300; And we follow the state construction even though it may not agree with our own opinion. *Supervisors* v. *United States*, 18 Wall. 71, 82; *Shelby* v. *Guy*, 11 Wheat. 361, 367; *Tioga R. R.* v. *Blossburg & Corning R. R.*, 20 Wall. 137, 143."

It is true that the Illinois Supreme Court has not directly passed upon the statute in question, but in passing on similar statutes it has so clearly defined its position that it seems inescapable that if it were required to pass upon the exact statute that it would sustain its validity. This seems apparent from what has been said in the foregoing cases.

In addition, the Appellate Court of Illinois, an intermediate court of that State, in *Fox Film Corp.* v. *Collins*, 236 Ill. App. 281, passed directly on the validity of this statute.

In *Erie Railroad Co.* v. *Hiet*, 247 U. S. 99, 100-101, this Court, with reference to its attitude in adopting the interpretation placed upon a statute by an intermediate State court, said:

> "The words of the statute seem to us to require a different construction from that adopted and they have been given their full literal meaning by the Supreme Court of the State in the case of an infant younger than the plaintiff. *Barcolini* v. *Atlantic City & Shore R. R. Co.*, 82 N. J. L. 107. In view of the importance of that tribunal in New Jersey, although not the highest court in the State, we see no reason why it should not be followed by the Courts of the United States, even if we thought its decision more doubtful than we do."

Under these circumstances this Court would be amply justified in declining to accept jurisdiction in this case.

The appellants have not been deprived of their right to worship God in accordance with the dictates of their own consciences, or denied any other of their constitutional rights. The constitutional guarantee of religious freedom does not include the right to wilfully violate the laws.

The policy of the State of Illinois, with reference to its guarantee of religious freedom, is set forth in its Constitution (Section 3, Article II, Illinois Constitution 1870), as follows:

> "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; *but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or*

> *justify practices inconsistent with the peace or safety of the state.* No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." (Italics ours.)

The court below aptly said, in its memoranda filed herewith:

> "Furthermore, it does not appear from the evidence that it is essential for the plaintiffs to distribute literature which belabors existing churches and their leaders with defamatory charges and epithets in order to perform their ministry."

It affirmatively appears from the Special Finding of Facts by the court below that as a result of similar activities on the part of the appellants in localities near or adjacent to St. Clair and Saline counties that serious riots occurred, resulting in serious injury to a number of persons, and destruction of property, necessitating the calling of the Illinois State Police Riot Squad to quell the riot, but the appellants attempt to meet these contentions by saying that if breaches of peace or riots occurred as a result of their scurrilous attack upon religion and the Catholic Church and its doctrines, that it is no fault of theirs, but is the fault of the people who were offended by the literature thus distributed. This position is refuted in one of appellants' own cases; *Cantwell* v. *Connecticut,* 310 U. S. 296, where this Court said (p. 308):

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts *but acts and words likely to produce violence in others.* No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the

> privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious." (Italics ours.)

And this Court has said:

> "A party's religious belief cannot be accepted as a justification for committing an overt act made criminal by the law of the land. *Reynolds* v. *U. S.*, 98 U. S. 145."

And the courts of the various States have enunciated similar doctrines. (See: *City of Louisiana* v. *Bottoms*, 300 S. W. (Mo. App.) 316, 318; *Coleman* v. *City of Griffin*, 189 S. E. (Ga.) 427, 429; *McMasters* v. *State*, 207 P. (Okla. App.) 566, 568-569.)

The appellants in St. Clair County, Illinois, were charged with statutory misconduct under the State statute which was "productive of the breach of peace or riot contrary to the form of the statute, * * *."

In Saline County the complaints filed against the appellants charged the said appellants with breach of the peace. The complaints included, in addition to the statutory charge, a further allegation, which, in substance, was as follows: "* * * which was productive of breach of peace and riots".

From time immemorial, controversies have raged between religious sects and believers. The contention of the appellants that theirs is the only true religion is not a novel or original theory. The Catholic, the Protestant, the Jew, the Mohammedans, and the followers of Confucius have made this same contention through the ages. It is a matter of knowledge so general that this Court will take judicial notice of the fact that a man's religion is instilled in him from his birth. It can be safely said that as a general

rule the teachings to the child will be the belief of the adult, and so thoroughly do parents instill in the minds of their children the sanctity of God in accordance with their beliefs that an insult to one's religion or its doctrines is more likely to provoke ill-feeling, breach of the peace, and riots than possibly any other known form of discussion. And we earnestly believe that the trial court adopted the correct view when it said that, in its opinion, the appellants could properly carry on their religious work without conducting a tirade and campaign of hatred against all religions.

In *Dealk* v. *Commonwealth*, 166 Ky. 39, 178 S. W. 129, a breach of the peace was defined in the following terms:

> "In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke, or excite others to break the peace. By 'peace' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society. It is, so to speak, that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. If it were, communities might be kept in a constant state of turmoil, fear and anticipated danger from the wicked language and conduct of a guilty party, not only destructive of the peace of the citizens but of public morals without the commission of the offense. The good sense and morality of the law forbid such a construction."

In that case a minister of the gospel was arrested and charged with breach of the peace in using "obscene, vulgar

and indecent language" in the presence of an assembly of people, including women and children. The Supreme Court of Kentucky, in sustaining the conviction, aptly said:

> "The appellant's excuse that he was merely rebuking the sin of impurity; that he did not intend to disturb or embarrass any one, but made the statement as a warning and rebuke to sin, is wholly without justification.
>
> It does not avail appellant for him to say he has a right to propagate his religious views. That right is not denied; but one will not be permitted to commit a breach of the peace, under the guise of preaching the gospel."

It is a well known fact that the same act or conduct may be a breach of peace in one community or locality, and would not be considered so in another community or locality. In the *Dealk* case, *supra*, it was said on this point:

> "It is well known that an Act which if committed at a certain place or time would not amount to a breach of the peace might well be considered as a crime if committed at another time or place, and under different circumstances. People *v.* Johnson, 86 Mich. 175, 48 N. W. 879, 24 Am. St. Rep. 116, 13 L. R. A. 163."

See also: 8 Am. Jur. 835, Par. 4.

The observation made in the annotation in 34 A. L. R. 580, is pertinent where it is said:

> "Where a local act prohibited the use of threatening, abusive and insulting words and behavior in the streets whereby a breach of the peace might be occasioned, and a Protestant lecturer had held meetings in public places, causing large crowds to assemble and obstruct the streets, and in addressing those meetings had used gestures and language which were highly insulting to the religion of the Roman Catholic inhabitants, of whom there were many in the city, it was held that he was

properly required to give security to be of good behavior. Wise *v.* Dunning (1902), 1 K. B. (Eng.) 167, 71 L. J. K. B. N. S. (65, 66 J. P. 212, 50 Week. Rep. 317, 85 L. T. N. S. 721, 18 Times L. R. 85, 20 Cox, C. C. 121—Div. Ct."

In *Bird* v. *Commonwealth*, 124 Va. 833, 98 S. W. 632; *Dire* v. *State*, 99 Ga. 20, 25 S. E. 609; it was held, in substance in those cases, that in the prosecution for acts productive of or intending to produce a breach of the peace the truth of the word spoken was no defense.

It is a general rule that, in prosecutions under breach of peace statutes, it is a question of fact to be determined by the jury under all the circumstances whether or not the defendant breached the peace. (See: 9 C. J. 392, Par. 17; 11 C. J. S. 825, Par. 16.) In 48 A. L. R. 97, in discussing this general class of cases the annotator has collected a large number of cases (pages 97 to 102) sustaining in substance the general rule that in prosecutions for breach of peace, whether or not the peace has been breached, is a question of fact.

It appears from the Special Findings of Fact and from the Memorandum in the court below, that the appellants had full, complete and ample opportunity to test the validity of this statute under the courts of Illinois. They have been apparently reluctant to submit to a jury of their peers in Illinois the question of fact whether there was, in fact, a breach of peace committed by them.

III.

The proper method to restrain the enforcement of penal provisions of State statutes is to exhaust the remedies in the State court and then appeal to this Court.

Watson v. *Buck*, — U. S. —, 61 S. Ct. 962-967;
Spielman Motor Co. v. *Dodge*, 295 U. S. 89-95;
Fenner v. *Boykin*, 271 U. S. 240;

Railroad Commission of Texas v. *Pullman Co.*, 312 U. S. —, 61 S. Ct. 643, 644;
Watch Tower Bible & Tract Soc. v. *City of Bristol*, 24 F. Supp. 57, aff'd. without opinion, 305 U. S. 572.

The court below adopted this view when it said:

> "Whether a statute of the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question for the courts of Illinois. This statute does not subject the plaintiffs to 'previous restraint' such as received the condemnation of the Supreme Court in *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496; *Cantwell* v. *Connecticut*, 310 U. S. 296 and in *Schneider* v. *State*, Supreme Law ed. Advanced Opinions, Vol. 84, p. 115. It requires no license for seeking contributions or for distribution of literature and no administrative censorship is provided. Until the statute has actually been violated or reasonable grounds exist for believing that the statute has been violated or that such violation is imminent, there can be no proper official interference with the distribution of the literature and such interference must be limited to the distribution of literature that offends the statute. It does not condemn publication of all literature as did the ordinance condemned in *Lovell* v. *Griffin, supra*, but is limited to publications having the nature and content described in the statute."

In the recent case of *Watson* v. *Buck, et al.*, — U. S. —, 61 S. Ct. 962-966, this Court adopted this view when it said:

> "The clear import of this record is that the court below thought that if a federal court finds a manysided state criminal statute unconstitutional, a mere statement by a prosecuting officer that he intends to perform his duty is sufficient justification to warrant the federal court in enjoining all state prosecuting officers from in any way enforcing the statute in question. Such, however, is not the rule. 'The general rule is that equity

will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. * * * We have said that it must appear that "the danger of irreparable loss is both great and immediate"; otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions.' *Spielman Motor Sales Co.* v. *Dodge,* 295 U. S. 89, 95, 96; 55 S. Ct. 678, 680, 681; 79 L. Ed. 1322."

IV.

The court below, after a full hearing, denied appellants relief on the grounds sought. This Court has held that the discretion of the court in refusing or granting such injunctions will not be disturbed by this Court in the absence of a very clear case against it.

Beal v. *Missouri Pacific R. R.*, 311 U. S. —, 61 S. Ct. 418; *Chicago Great Western R. Co.* v. *Kendall,* 266 U. S. 94; *Georgia, etc. Power Co.* v. *Railroad Commission,* 262 U. S. 625.

In *Beal* v. *Missouri Pacific R. R. Corporation,* — U. S. —, 61 S. Ct. 418, at 420-421, this Court said on this point:

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. *In re Sawyer,* 124 U. S. 200, 211, 8 S. Ct. 482, 488; 31 L. Ed. 402; *Davis & Farnum Mfg. Co.* v. *Los Angeles,* 189 U. S. 207, 23 S. Ct. 498, 47 L. Ed. 778; *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 500, 45 S. Ct. 141, 69 L. Ed. 402. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its ex-

traordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. *Terrace* v. *Thompson*, 263 U. S. 197, 214, 44 S. Ct. 15, 17, 68 L. Ed. 255; *Packard* v. *Banton*, 264 U. S. 140, 143, 44 S. Ct. 257, 258, 68 L. Ed. 596; *Tyson & Bro.* v. *Banton*, 273 U. S. 418, 428, 47 S. Ct. 426, 427, 71 L. Ed. 718, 58 A. L. R. 1236; *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 452, 47 S. Ct. 681, 682, 71 L. Ed. 1146.

This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether the act complained of is lawful or unlawful. *Harkrader* v. *Wadley*, 172 U. S. 148, 19 S. Ct. 119, 43 L. Ed. 399; *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89, 95, 55 S. Ct. 678, 680, 79 L. Ed. 1322. The federal courts are without jurisdiction to try alleged criminal violations of state statutes. The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this Court if such construction or application is appropriately challenged on constitutional grounds. *Hygrade Provision Co.* v. *Sherman*, supra; *Fenner* v. *Boykin*, 271 U. S. 240, 46 S. Ct. 492, 70 L. Ed. 927.

Hence interference with the processes of the criminal law in state courts, in whose control they are lodged by the Constitution, and the determination of questions of criminal liability under state law by federal courts of equity can be justified only in most exceptional circumstances, and upon clear showing that an injunction is necessary in order to prevent irreparable injury. Cf. *Hygrade Provision Co.* v. *Sherman*, supra; *Cline* v. *Frink Dairy Co.*, supra; *Spielman Motor Co.* v. *Dodge*, supra. And in the exercise of the sound discretion, which guides the determination of courts of equity, scrupulous regard must be had for the rightful independence of state governments and a remedy infringing that independence which might otherwise be given should be withheld if sought on slight or inconsequential grounds. *Di Giovanni* v. *Camden Insurance Asso-*

ciation, 296 U. S. 64, 73, 56 S. Ct. 1, 5, 80 L. Ed. 47, and cases cited."

V.

The Danger that the Appellants would suffer irreparable loss was neither great nor immediate and the court below correctly so held.

Fenner v. Boykin, 271 U. S. 243;
Spielman Motor Co. v. *Dodge,* 295 U. S. 89-95.

E.

Discussion of Cases Cited by Appellants in Their Jurisdictional Statement.

The appellants have collected a large number of cases under nine (9) general propositions in support of their contentions that this Court should take jurisdiction of this cause.

To analyze the facts in each case and show their inapplicability to the facts and statute in this case would put an unnecessary burden on this Court and serve no useful purpose. We have, however, taken the first four cases under each of their propositions (except the "First", under which no authorities are cited) and have briefly analyzed such cases, and a summary of each follows:

"Second."

The appellants here contend that the trial court committed reversible error in failing to hold it was necessary for protection of appellants to enjoin the appellees.

In *Hague* v. *C. I. O., et al.,* 307 U. S. 496, this Court had before it the construction of a city ordinance of Jersey City, New Jersey, which required a permit from the Chief of Police for a public meeting at which the speaker would advocate obstruction of the government of the United States or

of a State, or a change in Government other than by lawful means. There was also for consideration before this Court an ordinance which prohibited the distributing or the strewing on any street or public place newspapers, papers, etc. It further appears from the facts that the C. I. O. was a labor organization and was seeking by the pamphlets which they were distributing to discuss their rights under the National Labor Act. This Court said on page 515 of that case:

> "In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of committing views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks."

In the *Hague* case the court below held the ordinance was void on its face (p. 516) and this Court affirmed that decree with minor qualifications (p. 518).

In *Ex parte Young*, 209 U. S. 123, an original application was made to this Court for leave to file writs of *habeas corpus* and certiorari on part of one Young. There was involved in that case statutes of the State of Minnesota, fixing the rate of various railroad companies for the carriage of merchandise. The court found the tax rates fixed by the statute were "confiscatory" and held the act was therefore unconstitutional (p. 149).

In *Pierce* v. *Society of Sisters*, 268 U. S. 510, a statute of the State of Oregon required every parent, guardian or other person having charge or custody of a child between eight and sixteen years of age to send them to *public school* and the failure to do so was declared a misdemeanor.

Swift & Co. v. *U. S.*, 276 U. S. 311, was an action by the United States in the Supreme Court of the District of Columbia sitting in equity, under Section 4 of the Sherman Anti-Trust Act, charging the defendants in that case with creating a monopoly. It has no application in this case.

"Third."

The appellants here contend that they had no adequate remedy at law.

In *Stratton, Secretary of State* v. *St. L. & S. W. Ry. Co.*, 284 U. S. 530, it was held that a suit will not lie in a Federal Court to enjoin a State officer from collecting a tax that violates the Federal Constitution when the State law affords a legal remedy through payment of the tax under protest and suit to recover it from the collecting officer. No special circumstances are alleged in the bill which would render the legal remedy inadequate. An adequate legal remedy is afforded by Illinois law.

Risty v. *Chicago R. I. & P. Ry. Co.*, 270 U. S. 378-388, merely holds that "the test of equity jurisdiction in a Federal court is the inadequacy of the remedy on the law side of that court and not the inadequacy of the remedies *afforded* by the State courts. In this case, it did not appear that the State law afforded an adequate remedy, or that such remedy, if at all available, would not entail a multiplicity of suits.

Smyth v. *Ames*, 169 U. S. 466-(516-11), merely holds that the adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal court, is not to be conclusively determined by the statutes of the *particular State in which suit may be brought.*

Terrace v. *Thompson*, 263 U. S. 197, concerned the validity of a statute of the State of Washington which prohibited aliens who had not in good faith declared an intention to become citizens of the United States from taking or holding interests in land.

The statute was attacked on the ground that it was in conflict with the "due process" and "equal protection" clauses of the Fourteenth Amendment.

The Attorney General made a motion to dismiss on the grounds that the cause was not one cognizable in a court of equity. The District Court granted the motion and this Court affirmed the action of the District Court. This case is against appellants' contention and tends to strongly support the position of the appellees.

"Fourth."

The appellants here contend that the trial court committed reversible error in failing to hold that the acts and conduct of appellees were in violation of their constitutional rights.

In *Nashville C. & St. L. Ry. Co.* v. *McConnell*, 82 F. (2d) 65, the question for consideration was whether or not a labor union which did not represent any employees of an employer could lawfully picket the employer's plant.

In *Dearborn Pub. Co.* v. *Fitzgerald*, 271 F. 479 (District Court, N. P. Ohio E. P.) an injunction was sought by the publishing company against the Mayor of Cleveland seeking to restrain the arrest of vendors selling the "Dearborn Independent", a weekly newspaper containing an attack upon the Jewish race. The case is summed up briefly in the words of the court (p. 482):

> "The publication complained of cannot by any stretch of the imagination be classified as indecent, obscene or scandalous; but if it were, *the limit of the city's power would be to conduct a prosecution for the specific offense thus committed, and not the establishment of a censorship in advance of future publications*, and prohibition generally of the sale thereof upon the streets, in the same manner as other publications are sold" (Italics ours).

Johnson v. *Wells Fargo*, 239 U. S. 234, concerned the validity of a tax imposed upon express companies by the State of South Dakota based upon the gross earnings of

such companies. This statute was held to violate the constitution of that State, which required the property of a corporation to be taxed similarly to the tax imposed upon individuals.

Pierce v. *Society of Sisters,* 268 U. S. 510 (see point "Second").

"Fifth."

The appellants here contend that the trial court committed reversible error in failing to hold that the Illinois State statute was void because of vagueness and indefiniteness and by reason thereby denied the appellants their liberty without due process of law, contrary to the Fourteenth Amendment of the United States Constitution.

In *Herndon* v. *Lowry,* 301 U. S. 242, a criminal statute defining and providing penalty for insurrection, as *construed* and *applied* by State court in prosecution thereunder, held not to furnish a sufficiently ascertainable standard of guilt as a person was required to foresee if his action might in future incite others to insurrection.

In *Stromberg* v. *California,* 283 U. S. 359, State statute punishing the displaying of a red flag "as a symbol of *opposition* to organized government, held void as making criminal *peaceable* and orderly opposition to a government as organized and controlled by one political party by others not agreeing therewith violated guaranty of liberty.

In *United States* v. *Cohen Grocery Co.,* 255 U. S. 81, a Federal statute punishing "any unjust or unreasonable rate" etc. held void because no ascertainable standard provided.

In *Lanzetta et al.* v. *State,* 306 U. S. 451, a State statute defining and punishing as a "gangster" any person not engaged in any lawful occupation, *known* to be a member of a *gang* of 2 or more, who has been convicted three times as a disorderly person or convicted of any crime in any State, held void for uncertainty.

"Sixth."

The appellants here contend that the trial court committed reversible error in refusing to declare the Illinois State statute void because it deprived the appellants of their right of freedom of speech, freedom of the press and freedom of worship, contrary to the Fourteenth Amendment.

The case of *Cantwell* v. *Connecticut*, 310 U. S. 296, is readily distinguishable from the present one. It involved a State statute which forbids any person to solicit money or valuables for a religious cause unless a certificate therefor shall have first been procured from a designated official, who is required to determine whether such cause is a religious one and who may withhold his approval if he determines that it is not. This was held to be a *previous* restraint upon the free exercise of religion and a deprivation of liberty without due process of law. However, the court said, on page 306:

> "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to

what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."

Also, on page 308:

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts but acts and words likely to produce violence in others. *No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.*" (Italics ours)

It is to be noted that this case arose following a conviction in a State court under the statute complained of; it did not involve an attempt to impede the operation of the statute punishing the alleged crimes or misdemeanors, as is the present case, and the broad delegation of power to an administrative officer in the determination of what constitutes "a religious cause" was clearly a deprivation of liberty without due process.

Near v. *Minnesota*, 283 U. S. 697, arose by reason of the enforcement of the Minnesota statute providing for the issuance of an injunction against newspapers or periodicals publishing malicious, scandalous and defamatory matter. The newspaper complained of published serious charges against various officials, including the chief of police, county attorney, mayor, etc. The case largely concerned the propriety of injunctions to restrain and practically suppress a newspaper publishing statements which were deemed defamatory. The statute struck directly at the

freedom of the press. The court distinguished between the propriety of the use of the injunctive process on the one hand from the use of other legal processes to punish or prevent the publication of false statements on the other.

> "Under the statute, the publication of any statement is to be regarded as defamatory if it injures reputation and it is scandalous if it circulated charges of reprehensible conduct, whether criminal or otherwise, and the publication is thus deemed to invite public reprobation and to constitute a public scandal." (p. 710)

The above quotation was a finding of the Supreme Court of Minnesota, which the Supreme Court of the United States sharply criticized.

The Supreme Court said, on page 711:

> "In such a case, these officers are not left to their ordinary remedy in a suit for libel, or the authorities to a prosecution for criminal libel. Under this statute, a publisher of a newspaper or periodical, undertaking to conduct a campaign to expose and to censure official derelictions, and devoting his publication principally to that purpose, must face not simply the possibility of a verdict against him in a suit or prosecution for libel, but a determination that his newspaper or periodical is a public nuisance to be abated, and that this abatement and suppression will follow unless he is prepared with legal evidence to prove the truth of the charges and also to satisfy the court that, in addition to being true, the matter was published with good motives and for justifiable ends."

Also, on page 715:

> "But it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public, and that the common law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not

> abolished by the protection extended in our constitutions. id. pp. 883, 884. The law of criminal libel rests upon that secure foundation. * * * For whatever wrong the appellant has committed or may commit, by his publications, the State appropriately affords both public and private redress by its libel laws. As has been noted, the statute in question does not deal with punishments; it provides for no punishment, except in case of contempt for violation of the court's order, but for suppression and injunction, that is, for restraint upon publication."

The Court considers the attempts to impose "previous" restraints upon publications as compared to the punishment to be meted out to those who violate rules of decency and proper conduct in publishing matter offensive to others, and said on page 718:

> "The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions."

The case of *Schneider* v. *State*, 308 U. S. 147, involved a number of municipal ordinances designed to prevent the passing out of handbills in the streets or other public places and the decision of the Supreme Court practically amounted to a re-affirmation of the principles announced in many

earlier cases and adhered to in the later case of *Cantwell* v. *Connecticut*, 310 U. S. 296, to the effect that an ordinance may not abridge the constitutional liberty of those who are rightfully on the streets to impart information, through speech or the distribution of literature, by requiring the licensing of the distributor of circulars or canvassers from house to house, by the police after an inquiry amounting practically to censorship.

The Court said, on page 164:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

The case of *Thornhill* v. *Alabama*, 310 U. S. 88, involved a statute of the State of Alabama prohibiting persons, without just cause or legal excuse, from going near or loitering about the premises of any other person or corporation engaged in a lawful business for the purpose or intent of influencing other persons not to trade with or have business dealings with or be employed by such other person or corporation or picketing the place of business of other persons, etc.

The Court held the statute invalid, but said on page 105:

> "The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted. But no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter. We are not now concerned with picketing *en masse* or otherwise conducted which might occasion such imminent and aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger."

"Seventh."

The appellants here contend that the trial court committed reversible error in refusing to declare the State statute unconstitutional and void as construed and applied by appellees.

Cantwell v. *Connecticut*, 310 U. S. 296, (discussed under point "Sixth").

Schneider v. *State*, 308 U. S. 147, (discussed under point "Sixth").

In *Lovell* v. *City of Griffin*, 303 U. S. 444, the validity of a city ordinance was before this Court. The ordinance forbade as nuisance the distribution, by hand or otherwise, of literature of any kind without obtaining permission from the city manager.

In *Fiske* v. *Kansas*, 274 U. S. 380, the construction of a "criminal syndicalism" statute of the State of Kansas was before this Court on writ of error.

This Court held (p. 387) that there was no charge or evidence that the defendant secured members for an or-

ganization that advocated any crime, violence or other unlawful methods as a means of effecting industrial or political changes or revolution.

"Eighth."

The appellants here contend that the court committed reversible error in failing to hold that even though the statute was valid and constitutional, that the construction placed upon it by appellees was such as to deny appellants their constitutional rights.

Oney v. *City of Oklahoma City.* We are unable to find any reported opinion in this case.)

In *South Holland* v. *Stein,* 373 Ill. 472, an ordinance requiring a license to solicit orders for goods, etc., was enforced so as to preclude solicitation of subscriptions to educational or religious magazines. It was held void as not being within the powers granted the city, and to prohibit giving or furnishing literature would violate the freedom of speech and of the press.

In *Kennedy, et al.* v. *City of Moscow* (Idaho), 39 F. S. 26, the court there had for consideration the violation of a municipal ordinance prohibiting the distribution of any printed matter along or upon any street, alley, sidewalk, or park, etc., within the city limits without a permit obtained from a police officer, the saluting of the flag in the presence of the officer, and reciting the pledge of allegiance. Such applicant was further required to furnish sufficient information of identification.

Hague v. *C. I. O. et al.,* 307 U. S. 496, (discussed under point "Second").

"Ninth."

The appellants here contend the trial court committed reversible error in failing to hold that the statute in question was entirely beyond the police power of the State and

beyond the legislature's province to enact such law because there can be no libel of a class of persons.

The cases of *People* v. *Edmonson*, 4 N. Y. S. (2d) 257, 168 Misc. 142, and *People* v. *Downer*, 6 N. Y. S. (2d) 566, have no application to the law of the State of Illinois. This is not the law of Illinois. See *People* v. *Spielman*, cited and discussed under our Point II.

There is attached to appellants' jurisdictional statement "Appendix B", an opinion rendered by the District Court of Kentucky (*Bealer, et al.* v. *Smith, et al.*, Fed. Supp., decided June 4, 1941). In that case the court simply held that the distribution of printed matter by the Jehovah's Witnesses did not constitute "sedition" under the Kentucky statute. The court held that the statute was "not applicable or effective to prohibit or interfere with the plaintiffs or other of Jehovah's Witnesses in selling or distributing" printed matter, etc. The court then said:

> "The court concludes it is unnecessary to consider or determine the question presented as to the constitutionality of the act."

The appellants attack that portion of the opinion, wherein the court said:

> "The plaintiffs are at liberty, so far as the evidence shows, to propagate their beliefs, distribute their literature and receive contributions anywhere outside St. Clair and Saline counties."

When the above statement is read in connection with the opinion, it is clear that the court rightfully, in our opinion, took the view that *even if the appellants were unwilling to adjudicate their rights under the Illinois law and in the Illinois courts*, they still had the whole State of Illinois to carry on their work. This attitude of the court below is well illustrated where it said:

> "Here the danger of irreparable loss is neither great nor immediate and such loss as may be threatened can

be obviated in a large measure by the *plaintiffs themselves, if they so desire, pending the hearing of the case on its merits or the authoritative construction of the statute by the courts of the State''* (Italics ours).

We respectfully urge this Court to consider the factual situations in the present case, *i. e.*

(a) That serious riots had occurred in the vicinity of St. Clair and Saline counties, resulting in serious injury to persons and property as the direct and immediate result of appellants' attacks on the Catholic and Protestant religious doctrines, necessitating the calling of the State Police to quell such riots.

(b) That the same situation was again about to arise in St. Clair and Saline counties, and the county and city officials, acting in the "honest belief" that for the preservation of the peace and order of these communities it was necessary, in their official capacities, to take the steps which they did.

(c) That the said officials acted under a statute declared valid by the courts of Illinois, and which the court below has said was not unconstitutional.

In Conclusion.

The appellees herein respectfully suggest:

1. That the court dismiss this appeal as to the appellees, Dwight H. Green, Governor of Illinois, and George F. Barrett, Attorney General of the State of Illinois, in accordance with their motion included herein.

2. That if this Court should deny said motion as to appellees, Dwight H. Green and George F. Barrett, in that event that the cause be dismissed as to all appellees, or that this Court refuse to accept jurisdiction thereof, or, in the alter-

native that this Court affirm the court below, as per motions of appellees to dismiss or affirm included herein.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois,
Appellees.

Address: Supreme Court Bldg., Springfield, Illinois.

HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois, Attorney for Tom Gram, Individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, Individually, and as Deputy Sheriff of Saline County, Illinois, Trafton Dennis, Individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, Individually, and as Justice of the Peace of Saline County, Illinois,
Appellees.

Address: Eldorado, Illinois.

GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois, Attorney for "Doc" Prindable, Individually, and as Sheriff of St. Clair County, Illinois, Louis P.

Zerweck, Individually, and as State's Attorney of St. Clair County, Illinois, George Remnsnider, Individually, and as Mayor of the City of Belleville, Illinois, Thomas Lonie, Individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, Individually, and as Justice of the Peace of St. Clair County, Illinois,

Appellees.

Address: 30A Public Square, Belleville, Illinois.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

Appellants,

vs.

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

MOTION OF APPELLEES DWIGHT H. GREEN AND GEORGE F. BARRETT TO DISMISS.

Now comes Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf, and move the Court to dismiss the appeal herein on the ground that these parties are not properly party appellees in the above entitled cause; that said appellees are sued only in their official capacities; that said appellees were not in office at the time of the occurrences mentioned in the appellants' (plaintiffs') com-

plaint; and that no relief is sought against said appellees in complaint of plaintiffs; that said appellees are joined as parties to the said cause only by reason of the provisions of the statutes requiring notice to them (28 U. S. C. 380), and, therefore, these appellees say that the said cause should be dismissed as to such appellees, as will more fully appear from the Statement of Grounds Making Against the Jurisdiction of this Court, filed herewith.

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 567

CECIL BEVINS, ET AL.,

vs. *Appellants,*

"DOC" PRINDABLE, ET AL.,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

Now comes Tom Gram, individually, and as Sheriff of Saline County, Illinois, Jack C. Edwards, individually, and as Deputy Sheriff of Saline County, Illinois, Trafton Dennis, individually, and as State's Attorney of Saline County, Illinois, and Luke Barnhill, individually, and as Justice of the Peace of Saline County, Illinois (herein called the Saline County Appellants), by and through Harry J. Flanders, Assistant State's Attorney of Saline County, Illinois, their attorney in this behalf, and "Doc" Prindable, individually, and as Sheriff of St. Clair County, Illinois, Louis P. Zerweck, individually, and as State's Attorney of St. Clair County, Illinois, George Remnsnider, individually, and as Mayor of the City of Belleville, Illinois, Thomas Lonie, individually, and as Chief of Police of the City of Belleville, Illinois, and Anthony J. Stoeckel, individually, and as Justice of the Peace of St. Clair County, Illinois (herein called the St. Clair County Appellants), by and through Georg F. Kelling, Assistant State's Attorney for St. Clair County, Illinois, their attorney in this behalf, and if the

said Motion of Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, Attorney General of the State of Illinois, by and through George F. Barrett, their attorney in this behalf (presented herewith), to dismiss the appeal on the grounds that the said Dwight H. Green and George F. Barrett are not proper parties, herein, should be denied by this Court, then the said Dwight H. Green, Governor of the State of Illinois, and George F. Barrett, as Attorney General of the tSate of Illinois, by and through George F. Barrett, their attorney in this behalf, join with the other named appellees herein, and all appellees herein move the court to dismiss the said appeal on the grounds that no substantial Federal qeustion is presented by the record, and the said appellees and each of them further move this Court and say that if the said Motions are not granted, this Court should affirm the decision of the District Court of the State of Illinois on the grounds that the questions on which the decision of this case depends are so unsubstantial as not to need further argument, all of which more fully appears in the Statement of Grounds Making Against Jurisdiction of this Court, filed herewith.

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Attorney pro se and as Attorney for Dwight H. Green, Governor of the State of Illinois;
HARRY J. FLANDERS,
Assistant State's Attorney for Saline County, Illinois, Attorney for Saline County Appellees;
GEORG F. KELLING,
Assistant State's Attorney for St. Clair County, Illinois, Attorney for St. Clair County Appellees.